

REMARKS

Claims 1-10 have been examined. This amendment corrects typographical and grammatical errors in the specification and claims. Claims 1, 8 and 9 have been canceled and replaced with new claims 11-13 respectively, which more clearly recite the present invention. New claim 14 is supported by the specification at page 4, lines 29-30. New claim 15 finds support at page 4, line 27 to page 5, line 4. No new matter has been added by these amendments.

Specification Objection

The specification has been objected to for containing spelling and grammatical errors. Applicants have corrected these errors by the above amendments.

Rejection Under 35 USC § 112

Claims 4, 7 and 10 have been rejected under 35 USC § 112, second paragraph as containing indefinite subject matter. The above amendments correct any typographical and grammatical errors, place the claims in proper Markush format, and provide antecedent basis for all claim elements. Accordingly, the rejection should be withdrawn.

Rejection Under 35 USC § 102(b)

Claims 1-10 have been rejected under 35 USC § 102(b) as being anticipated by Giese. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Applicants are claiming meat products which exhibit a plasma-cholesterol-suppressing property. The meat products comprise (1) a fat content of less than half of that present in conventional meat products, and (2) soy protein. In another embodiment of the invention, the meat products comprise approximately the same content of vegetable oil and animal fat as lipids. Applicants further claim that the plasma-cholesterol levels in man can be suppressed by administering the meat products according to the invention to man.

Giese is directed to low fat meat products which optionally contain soy protein as an extender or binder therein. Giese describes that polyunsaturated fats are said to lower plasma-cholesterol and further describes various low-fat meat products within the article. However, the only disclosure of a meat product containing polyunsaturated fats, and thus, the only meat product potentially exhibiting plasma-cholesterol suppressing characteristics, is at page 105, column 3. There, Giese

2nd 103
ed. 3 *cholesterol suppressing*
rejection 1 *is stated* *not* *x 1070* *not* *555.7 mg cholesterol*

discloses that Omega-3 polyunsaturated fish oils were added to low-fat frankfurters. However, these frankfurters are not described as containing soy protein as presently claimed. In this regard, Applicants further assert that Giese fails to recognize the cholesterol-suppressing effects of soy protein as described by Applicants at page 5, lines 1-4 of the instant specification. And although the Giese frankfurters containing fish oil are described as being low-fat, it is not disclosed that the fat content is less than half of that of conventional meat products. Additionally, Applicants note that the discussion of frankfurters at page 105, column 1 describes the conventional product as containing 29g of fat (29%) while the low-fat variety contains 18-22% fat which is not less than half of the conventional product.

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Further, Giese teaches away from a low-fat product as a means for lowering cholesterol. See page 101, second column, last line which states "[t]he authors concluded that choosing low-fat ground beef to lower cholesterol may not be worthwhile."

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This is explained in column 3 as being based on the fact that research has found that fat reduction results in an unsatisfactory product in terms of flavor and texture. The ideal reduced-fat content for the ground meat patties described

was found to be 20% based on consumer preference. A 20% fat content is less than half of the conventional fat content.

Thus, there is no single meat product disclosed in Giese which is within the scope of applicants claims. If one of ordinary skill in the art were to attempt to prepare a plasma-cholesterol suppressing meat product based on the disclosure of Giese, the skilled artisan would have to pick and choose from the disclosure to arrive at a product which is still outside the scope of the present invention. At best, the product would be a low-fat frankfurter containing fish oil, no soy protein and greater than half of the fat content of conventional frankfurters. Applicants again note that even this embodiment is not a single meat product disclosed in Giese, but rather a combination of described properties. Anticipation is not found by a hindsight selection based on an applicant's disclosure of variables within a broad generic disclosure. It is improper to "use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." In re Fine, 837 F.2d at 1075, 5 USPQ2d at 1600.

Giese further fails to disclose that the meat products comprise approximately the same content of vegetable oil and animal fat as lipids, as Applicants recite in instant claim 2.

The rejection does not address this embodiment of the invention, and therefore Applicants do not understand the basis for asserting that the invention is disclosed or even inherent in the Giese article.

Accordingly, since the disclosure of Giese fails to anticipate the meat products of the present invention and the methods for suppressing plasma-cholesterol levels in man by the administration of the products to man, the rejection under 35 USC § 102(b) under Giese should be withdrawn.

Claims 1, 5, 7, 8 and 10 have been rejected under 35 USC § 102(b) as being anticipated by Bonkowski. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Bonkowski describes meat products containing soy protein in various amounts. Some of the meat products are described as being low-fat. Bonkowski fails to describe that the meat products possess plasma-cholesterol-suppressing properties. The only mention of cholesterol in Bonkowski is at column 2, lines 1-2 where an object of the invention is described as being a method of processing meats in order to reduce the cholesterol in muscle meat of the meat product. This is also alluded to at column 1, line 22. Such a disclosure is not sufficient to

rejection does not address cholesterol suppressing properties

not sufficient

anticipate "plasma-cholesterol-suppressing properties" and methods of suppressing plasma-cholesterol levels in man.

Inasmuch as Bonkowski fails to describe a single embodiment, or even a broad disclosure of meat products and methods within the scope of Applicants' claims, it cannot be said that the present invention is anticipated by Bonkowski. Accordingly, the rejection under 35 USC § 102(b) should be withdrawn.

Rejection Under 35 USC § 103

Claims 2-4, 7, 9 and 10 have been rejected under 35 USC § 103(a) as being unpatentable over Bonkowski in view of Helmer et al. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

First, Applicants again assert that Bonkowski fails to disclose the present invention since Bonkowski fails to describe that the meat products possess plasma-cholesterol-suppressing properties. Nor would it have been obvious to the skilled artisan that the disclosed meat products would exhibit such properties since Bonkowski fails to suggest a nexus between lowering cholesterol levels in meat products and lowering

plasma-cholesterol levels in man. Thus a *prima facie* case of obviousness has not been established with respect to Bonkowski.

The language of the Office Action seems to imply that Bonkowski does not teach the use of soybean oil, but that it would be obvious to do so from the teachings of Helmer.

addition of lower sat'd fats instead
However, Helmer fails to teach the substitution of vegetable oils for animal fat as suggested in the rejection. The cited

disclosure of Helmer (column 5, lines 53-60) merely states that vegetable oils can be added to produce a stable sausage emulsion. The vegetable oils are clearly distinguished from animal fats at lines 58-59: "vegetable oil is interpreted to include all unsaturated fats other than those of animal origin." Accordingly, there is no suggestion to use vegetable oils and animal fats interchangeably in a meat product according to Helmer. And there is certainly no motivation to substitute only a portion of the animal fat present in a Bonkowski with vegetable oils.

Thus, Helmer fails to establish an equivalence between the vegetable oils described therein and the animal fat of Bonkowski. Citing references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the

combination of claimed elements would have been obvious. Ex parte Hiyamizu, (BPAI 1988) 10 USPQ2d 1393. The references, viewed by themselves and not in retrospect, must suggest doing what applicant has done. In re Shaffer, (CCPA 1956) 229 F2d 476, 108 USPQ 326, In re Skoll (CCPA 1975) 523 F2d 1392, 187 USPQ 481. Helmer further fails to correct the deficiencies of Bonkowski by failing to teach that the meat products may possess plasma-cholesterol-suppressing properties.

Inasmuch as Bonkowski does not make the presently claimed invention *prima facie* obvious, and the defects are not cured by the combination with Helmer, which anyway is improperly combined, the rejection of claims 2-4, 7, 9 and 10 under 35 U.S.C. § 103 over these cited references should be withdrawn.

The present application describes a novel, useful invention. The above amendments and remarks provide for an enabling description of the invention and claims to patentable subject matter. Thus, Applicant respectfully requests allowance of claims 2-7 and 10-15.

In view of the above remarks, all the claims remaining in the case as amended, including newly added claims, are submitted as defining non-obvious, patentable subject matter. Reconsideration

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of the rejections and allowance of the claims are respectfully requested.

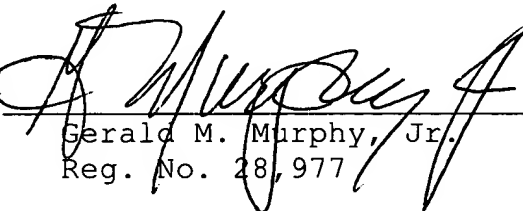
If the Examiner has any questions concerning this application, the Examiner is requested to contact Laura C. Lutz, Reg. No. 43,451, at 703/205-8000 in the Washington, D.C. area.

Pursuant to 37 CFR 1.17 and 1.136(a), the Applicants respectfully petition for a three (3) month extension of time for filing a response in connection with the present application and the required fee of \$870.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. 1.16 or under 37 C.F.R. 1.17; particularly, extension of time fees.

Respectfully yours,

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